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No.

In The

Supreme Court of the United States

Roger Liverman, Jr.,
Petitioner.

Vs.

Committee on the Judiciary,
U.S. House of Representatives,
Respondent

On Petition for Writ of Certiorari to the United States Court of Appeals, Tenth Circuit

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PETITION FOR WRIT OF CERTIORARI

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40 pp

QUESTIONS PRESENTED

The United States Supreme Court has stated that:

"If there is one doctrine more deeply rooted than any other in the process of constitutional adjudication, it is that we ought not to pass on questions of constitutionality ...unless such adjudication is unavoidable. Spector Motor Service v McLaughlin, 323 U.S. 101,105 (1944).

John Marshall, third Chief Justice of the Supreme Court of the United States, laid down in the opinion of Marbury v Madison (1803) and in McCulloch v The State of Maryland (1819) certain principles which have come to be accepted as fundamental in all questions touching the respective powers of the Federal Government.

In the case now to be determined, the lower Courts and the Respondent denies the obligation of a law enacted by the Legislature of the Union, the Petitioner, on his part contests the validity of the decisions made by the lower courts.

The issue of Judicial Review and the Supremacy of Laws enacted by the Congress has been put into question and undermined by the decision of both the district court and the United States Court of Appeals for the 10th Circuit if allowed to stand.

The questions before the Court are of great import and which should be addressed by this Court are:

1. Did the United States Court of Appeals for the Tenth Circuit entered a decision in conflict with prior Supreme Court Rulings?

2. Under Article VI Clause 2 of the U.S. Constitution is Title 28 U.S.C. § 1331 Federal Question the "Supreme Law of the Land"?

3. Did the Congress consent to the present action by enacting. Title 28 U.S.C. § 1331 Federal Question?

4. Does the Petitioner have the right to go to court to sue the Respondent under Title 28 U.S.C. § 1331 Federal Question? If so then;

5. Is the Doctrine of Sovereign Immunity of the United States jeopardized by allowing Petitioners suit under Title 28 U.S.C. § 1331 Federal Question?

STATEMENTS OF INTERESTED PARTIES

There are no other known parties than those appearing on the cover of this Writ of Certiorari.

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Cases Cited:

GFF Corp. v Associated Wholesale Grocers Inc., 130 F. 3d 1381, 1384(10th Cir. 1997).

Giles v Harris, 189 U.S. 475,486 (1903)

Id., at 192

Lonsdale v United States, 919 F. 2d 1440, 1443-44 (10th Cir.1990).

Marbury v. Madison, 1 Cranch 137 (1803)

McCulloch v The State of Maryland (1819)

Muskrat v United States 219 U.S. 346, 361 (1911)

Spector Motor Service v McLaughlin, 323 U.S. 101,105 (1944).

Steel Co. v. Citizens for Better Environment, 523 U.S. 83, 89

Sutton v, Utah State Sch. for the Deaf & Blind, 173 F.3d 1226, 1236 (10th Cir. 1999)

United States v Congress of Industrial, 335 U.S. at 125

United States v. Mitchell, 463 U.S. 206, 212 (1983)

United States v Nordic Village, Inc., 503 U.S. 30, 33 (1992)

United States v Richman (In re Talbot), 124 F.3d 1201, 1206 (10th Cir. 1997)

United States v Sherwood, 312 U.S. 584, 586 (1941)

Wyoming v United States, 279 F.3d 1214, 1225 (10th Cir. 2002)

Statutes cited:
Title 28 U.S.C. § 1331 Federal Question

Federal Rules of Procedures
Fed. R. Civ. P. 12 (b)(6)

Other Authorities Cited:

Article I Section 2, clause 5 of the U.S. Constitution

Article I, Section 7, of the U.S. Constitution

Article III, Section 2 Clause (1) &(2) of the U.S. Constitution

Article VI Clause 2 of the U.S. Constitution

Fourteenth Amendment of the U.S. Constitution.

Committee on the Judiciary, See 93-1, Oct. 23, 1973, p 34873

Congressional Record Sept.22, 1997 Page H7604

Deschler's Rules of Precedents:

Deschler Ch.14 App.pp726-728.

Deschler Ch.14§5

Hinds §§2364, 2494

Jefferson's Rules of the House of Representatives

III, 2342, 2400; VI, 525, 526, 528, 535, 536

III, 2495, 2516; 2520, VI, 552

III, 2385, 2506

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Federalist, No. 78

How Our Laws Are Made-- Revised and Updated January 31, 2000 by Charles W. Johnson, Parliamentarian, U.S. House of Representatives

McRee, Life and Correspondence of James Iredell 169,172-173 (1858)

Rules of Procedure for the Consideration of Private Bills. – U.S. House of Representatives

Appendix

Appendix A --- Order and Judgment of the United States Court of Appeals for the Tenth Circuit Decided October 23, 2002.

Appendix B --- Order of the United States District Court for the District of Utah, Central Division, Decided March 05, 2002.

STATEMENT OF JURISDICTION

Under provisions of Article III, Section 2 Clause (1) & (2) of the United States Constitution states:

"Clause 1: The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; .... to Controversies to which the United States shall be a Party;

Clause 2: In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the Supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the Supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

In this specific case the U.S. Supreme Court has both Original and Appellate Jurisdiction.

Original Jurisdiction

The United States is a party to this cause of action, i.e. the Respondent is the Committee on the Judiciary, U.S. House of Representatives.

The Supreme Court shall have original jurisdiction in "In all Cases affecting Ambassadors, other public Ministers." Article III Section 2 Clause 2, U.S. Constitution.

The Committee on the Judiciary, U.S. House of Representatives by virtue and nature of their duties are "public Ministers."

Appellate Jurisdiction

This cause of action originated in the U.S. District Court, District of Utah, Central Division on May 29, 2001. On March 05, 2002, the District Court dismissed the Complaint.

On March 12, 2002, the decision was appealed to the United States Court of Appeals for the Tenth Circuit. On October 23, 2002, the Tenth Circuit affirmed the lower court ruling.

"In all the other Cases before mentioned, the Supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make." Article III Section 2 Clause 2, U.S. Constitution.

STATEMENT OF THE CASE

How the Case got to the District Court.

On September 09, 1997, a Petition to the Government of the United States of America for a Redress of Grievances & Petition for Private Claim [hereinafter referred to as the "Petition"] was filed with the Office of the Clerk, U.S. House of Representatives.

The "Petition"

The "Petition" is not a list of signatures that was sent to the U.S. House of Representatives, nor was the "Petition" sent directly to the Committee on the Judiciary by the Plaintiff.

The Petition submitted contained 14 bound books. The first book was the petition for redress of grievances and private claim. Four of the books contained a Formal Notification to the Honorable Henry Hyde, Chairman, Committee on the Judiciary, U.S. House of Representatives of Impeachable Offenses committed by employees of the United States Department of Treasury, Department of Labor, Department of Justice and of U.S. District Judges.

To understand the process and **significance** of this particular "Petition" on this particular case--is imperative for justice to be done and to understand the issues presented in the district court.

The "Petition" contained 2 distinct and different instruments within it. It was a petition for both "redress of grievances" **and** "private claim."

This "Petition" brought into sharp focus a little known, if heretofore unnoticed function and role

of the U.S. House of Representatives and the Committee on the Judiciary concerning the nature of impeachment and that of private claims.

The Petition called for the direct impeachment of civil officers and employees of the United States. Prior to July 1998, pursuant to the authority conferred on it by the U.S. Constitution, the House of Representatives had enacted a comprehensive and carefully interwoven plan and set of procedures and timetables to govern the constitutional responsibility of impeachment, the conduct of how impeachments are initiated, and the timely resolution of, and controversies related thereto.

The Impeachment Process

Constitutional Provisions: House Functions: The impeachment power is delineated and circumscribed by several provisions of the U.S. Constitution. Under Article I Section 2, clause 5 states: "... [The House of Representatives] shall have the sole power of Impeachment."

Nature of Impeachment:
Impeachment is a constitutional remedy addressed to serious offenses against the system of government. It is the first step in a remedial process—that of removal from public office and possible disqualification from holding further office. The purpose of impeachment is not personal punishment; rather, its function is primarily to maintain constitutional government. Deschler Ch.14 App.pp726-728.

Initiating Impeachment Proceedings:
In most cases, impeachment proceedings in the House have been initiated either by introducing resolutions of impeachment by placing them in

the hopper, or by offering charges in a resolution on the floor of the House under a question of constitutional privilege. Deschler Ch.14§5. Other methods of setting an impeachment in the House include; "charges initiated by memorial from one or more citizens and referred to committee." 3 Hinds §§2364, 2494 and "Resolutions introduced through the hopper which directly call for an impeachment are referred to the Committee on the Judiciary." See 93-1, Oct. 23, 1973, p 34873.

Investigation of Impeachment Charges:
The impeachment having been made on the floor by a Member (III, 2342, 2400; VI, 525, 526, 528, 535, 536), or charges suggesting impeachment having been made by memorial (III, 2495, 2516; 2520, VI, 552), or even appearing through common fame (III, 2385, 2506), the House has at times ordered an investigation at once. At other times it has refrained from ordering investigation until the charges had been examined by a committee. (III, 2364, 2488, 2491, 2492, 2494, 2504, 2513).

Private Claim

Forms of Congressional Action
The work of Congress is initiated by the introduction of a proposal in one of four forms: the bill, the joint resolution, the concurrent resolution, and the simple resolution.

The most customary form used in both Houses is the bill. During the 105th Congress (1997-1998), 7,529 bills and 200 joint resolutions were introduced in both Houses. Of the total number introduced, 4,874 bills and 140 joint resolutions originated in the House of Representatives.

For the purpose of simplicity, this discussion will be confined generally to the procedure on a House of Representatives bill.

BILLS

A bill is the form used for most legislation, whether permanent or temporary, general or special, public or private. The form of a House bill is as follows:

A BILL

For the establishment, etc. [as the title may be].Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, etc.

The enacting clause was prescribed by law in 1871 and is identical in all bills, whether they originate in the House of Representatives or in the Senate.

Bills may originate in either the House of Representatives or the Senate with one notable exception provided in the Constitution. Article I, Section 7, of the Constitution provides that all bills for raising revenue shall originate in the House of Representatives but that the Senate may propose or concur with amendments. By tradition, general appropriation bills also originate in the House of Representatives.

There are two types of bills-public and private. A public bill is one that affects the public generally. A bill that affects a specified individual or a private entity rather than the population at large is called a private bill. A typical private bill is used for relief in matters such as immigration and naturalization and claims against the United States.

A bill originating in the House of Representatives is designated by the letters "H.R." followed by a number that it retains throughout all its parliamentary stages. The letters signify "House of Representatives".

Introduction and Referral to the Committee

Any Member, the Resident Commissioner from Puerto Rico, or the Delegates in the House of Representatives may introduce a bill at any time while the House is in session by simply placing it in the "hopper," a wooden box provided for that purpose located on the side of the rostrum in the House Chamber.

Permission is not required to introduce the measure. Printed blank forms for an original bill are available through the Clerk's office. The Member introducing the bill is known as the sponsor. An unlimited number of Members may co-sponsor a bill.

To prevent the possibility that a bill might be introduced in the House on behalf of a Member without that Member's prior approval, the sponsor's signature must appear on the bill before it is accepted for introduction.

In the House of Representatives, it is no longer the custom to read bills-even by title-at the time of introduction. The title is entered in the Journal and printed in the Congressional Record, thus preserving the purpose of the custom. The bill is assigned its legislative number by the Clerk. The bill is then referred as required by the rules of the House to the appropriate committee or committees by the Speaker, the Member elected by the Members to be the Presiding Officer of the House, with the assistance of the Parliamentarian.

The bill number and committee referral appear in the next issue of the Congressional Record.

It is then sent to the Government Printing Office where it is printed in its introduced form and printed copies are made available in the document rooms of both Houses. Printed and electronic versions of the bill are also made available to the public. Copies of the bill are sent to the office of the chairman of the committee to which it has been referred. The clerk of the committee enters it on the committee's Legislative Calendar.

Each committee's jurisdiction is divided into certain subject matters under the rules of each House and all measures affecting a particular area of the law are referred to the committee with jurisdiction over the particular subject matter.

Committee on the Judiciary in the House has jurisdiction over measures relating to judicial proceedings generally, and 17 other categories, including matters of impeachment and private claim bills.

Consideration by Committee

One of the first actions taken by a committee is to seek the input of the relevant departments and agencies. Frequently, the bill is also submitted to the General Accounting Office with a request for an official report of views on the necessity or desirability of enacting the bill into law.

Normally, ample time is given for the submission of the reports and they are accorded serious consideration. However, these reports are not binding on the committee in determining whether or not to act favorably on the bill.

Reports of the departments and agencies in the executive branch are submitted first to the Office of Management and Budget to determine whether they are consistent with the program of the President. Many committees adopt rules requiring referral of measures to the appropriate subcommittee unless the full committee votes to retain the measure at the full committee.
Subcommittee on Immigration and Claims.

> "In connection with its jurisdiction over claims, the subcommittee considers private bills extending relief to individuals who have no other existing remedy. The right to petition for a redress of grievances is guaranteed by the first amendment to the Constitution. When called upon to decide whether relief should be granted to persons seeking redress of grievances, the subcommittee is guided by principles of equity and justice. The task of the subcommittee is to determine whether the equities and circumstances of a case create a moral obligation on the part of the Government to extend relief to an individual."
>
> Excerpt from "Rules of Procedure for the Consideration of Private Bills."

On September 22, 1997, the "Petition" was filed by the Clerk, Office of the Clerk, U.S. House of Representatives and appeared on the Congressional Record on Page H7604 which stated:

"Under clause 1 of Rule XXII, 21, the **SPEAKER** presented a petition of Roger Liverman, Jr., of Provo, Utah relative to a redress of grievances and petition for private claim, which was referred to the Committee on the Judiciary"

It must be noted: The bill was not assigned its legislative number by the Clerk. The bill is then referred as required by the rules of the House to the appropriate committee or committees by the Speaker, the Member elected by the Members to be the Presiding Officer of the House, with the assistance of the Parliamentarian. The bill number did not appear in the Congressional Record.

On July 15, 1998, a letter was sent from the Honorable Henry Hyde, Chairman of the Committee on the Judiciary to Roger Liverman, Jr., stating:

> "As you know, there is currently a report being done by the Department of Treasury Inspector General in reference to your case, that report has not been received by the Committee to date... Once that report is received, an evaluation will be made by the Committee on your petition."

On March 08, 2001, Roger Liverman, Jr., received an email from Congressman Chris Cannon's[1] Prove office. Dee Dee Rose, District Director, which states:

> "I have spoken with Thad following your phone message to Jose. Thad tells me that your advise Congressional options are foreclosed. ..... You should not expect a response from Mr. Sensenbrenner to your inquiry regarding your claim. Currently your options are to hire legal counsel and

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[1] It should be noted that Honorable Chris Cannon sits on the Committee on the Judiciary, specifically the Subcommittee on Immigration and Claims.

consider filing a lawsuit in Federal District Court or the Federal Court of Claims. ...."

On May 29, 2001, Roger Liverman, Jr. Plaintiff filed a cause of action in the U.S. District Court, District of Utah, Central Division against the Defendant Committee on the Judiciary, U.S. House of Representatives.

Basis of the Complaint

The basis for the complaint concerned the disparate treatment of Plaintiff's Petition by Defendant's actions concerning the Handling, Processing and Reviewing Plaintiff's Petition for Redress of Grievances and Private Claim.

That the Handling, Processing and Reviewing of Plaintiff's Petition was conducted according to varying, and unspecified —standards by officials unspecified and according to an ambiguous, unknowable timetable. That said scheme is plainly arbitrary, capricious, unequal and standardless and in violation of fundamental principles of Equal Protection and Due Process Clauses of the Fourteenth Amendment of the U.S. Constitution.

The unconstitutional flaws of the Defendant's conduct immediately bore further unconstitutional fruit when the Defendant attempted to implement the creation of an entirely new set of procedures, inconsistent with long standing House Rules and established Precedent on Impeachment[2] on who and how impeachment Proceedings are instituted.

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[2] Jefferson's Rules of the House of Representatives, and Deschler's Rules of Precedents.

That Defendant's conduct has not only violated the Constitution and possible federal law[3], it has created a dilemma virtually guaranteed to incite controversy, suspicion, and lack of confidence not only in the process but in the result that such a process would produce.

Basis of the District Court's Jurisdiction.

This cause of action was originated in the United States District Court, District of Utah, Central Division under Title 28 U.S.C. § 1331 Federal Question[4].

Under this Federal Statute the "the district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws or treatise of the United States".

This civil action arose under the Fourteenth Amendment of the U.S. Constitution.

What the Court below did.

U.S. District Court

On March 5, 2002, the district court dismissed the complaint pursuant to Fed. R. Civ. P. 12 (b)(6), holding that (1) sovereign immunity barred the suit, (2) it lacked subject matter jurisdiction to order the Committee to perform a legislative function, and (3) inasmuch as the Petition called

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[3] The Committee on the Judiciary failure to act on knowledge that a felony had taken place failed to report such incident to the U.S. Dept of Justice may constitute violations of Title 18 U.S.C. §4 Misprision of Felony.

[4] Title 28 U.S.C. § 1331 Federal Question. As amended July 25, 1958 Pub. L. 85-554, §1, Pub. L. 96-486, § 2(a), 94 stat .2369

for the initiation of impeachment proceedings against various United States officials, Mr. Liverman lacked a judicially cognizable interest in the prosecution of another. R. Doc. 35 at 1-2.

On March 12, 2002, a Notice of Appeal was filed by the Pro Se Plaintiff Roger Liverman, Jr.

United States Court of Appeals

On October 23, 2002 the United States Court of Appeals Tenth Circuit affirmed the lower courts decision. "Our review is de novo. See Sutton v, Utah State Sch. for the Deaf & Blind, 173 F.3d 1226, 1236 (10th Cir. 1999). A Rule 12(b)(6) dismissal will be upheld if, accepting the facts pleaded in the complaint as true, it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Id. (quoting GFF Corp. v Associated Wholesale Grocers Inc., 130 F. 3d 1381, 1384(10th Cir. 1997)." See Appendix A

On the merits, Mr. Liverman contends that the district court erred by dismissing on the grounds of sovereign immunity and lack of subject matter jurisdiction. Under the doctrine of sovereign immunity, the United States is immune from suit unless it consents to be sued. See United States v Sherwood, 312 U.S. 584, 586 (1941). Moreover, "the existence of consent is a prerequisite for jurisdiction." United States v. Mitchell, 463 U.S. 206, 212 (1983). The Unites States consents to suit only when Congress "unequivocally expresses in statutory text its intention to waive the United States' sovereign immunity." United States v. Richman (In re Talbot), 124 F.3d 1201,1206 (10th Cir. 1997)(citing United States v Nordic Village, Inc., 503 U.S. 30,33(1992)).

As the district court recognized, Congress has not consented to the present action. Aware of this jurisdictional hurdle to maintenance of his suit, Mr. Liverman argues that by enacting 28 U.S.C. § 1331, which provides for federal court jurisdiction of all civil actions "arising under the Constitution laws, or treaties of the United States," Congress has effectively waived sovereign immunity in all federal question cases, Mr. Liverman's argument is without merit. Obviously, acceptance of such an argument would necessarily eliminate the doctrine of sovereign immunity as a jurisdictional bar to suits against the United States. Moreover, this Court has specifically held that "[g]eneral jurisdictional statutes such as 28 U.S.C. §1331 do not waive the Government's sovereign immunity." Wyoming v United States, 279 F.3d 1214, 1225 (10th Cir. 2002)(citing Lonsdale v United States, 919 F. 2d 1440, 1443-44(10th Cir. 1990).

Reasons for Granting the Writ

1. Did the United States Court of Appeals for the Tenth Circuit enter a decision in conflict with prior Supreme Court Rulings?

John Marshall, third Chief Justice of the Supreme Court of the United States, laid down in the opinion of Marbury v Madison (1803) and in McCulloch v The State of Maryland (1819) certain principles which have come to be accepted as fundamental in all questions touching the respective powers of the Federal Government.

The issue of Judicial Review and the Supremacy of Laws enacted by the Congress has been put into question and undermined by the decision of

the United States Court of Appeals for the 10th Circuit if allowed to stand.

The decision of the United States Court of Appeals for the 10th Circuit "..this Court has specifically held that "[g]eneral jurisdictional statutes such as 28 U.S.C. §1331 do not waive the Government's sovereign immunity."

This statement is in direct conflict with the Supremacy Clause and doctrine established in McCulloch v The State of Maryland (1819).

To state that Title 28 U.S.C. §1331 is merely a "general jurisdictional statute" is without merit. The logic of the United States Court of Appeals for the Tenth Circuit if allowed to prevail, on this matter simply would allow the arbitrary notion [that Some Laws are Supreme and Some are Not] and thus directly contradicts and undermines McCulloch v The State of Maryland (1819)

A law cannot be the supreme law of the land, if any act can stand in its way. The statute that which Congress has enacted authorized that the "district courts shall have original jurisdiction **of all civil actions** arising under the Constitution, laws, or treaties of the United States." Title 28 U.S.C.§1331.

By virtue of it being enacted into law, it became the "Supreme Law of the Land". Under Article VI Clause 2 of the United States Constitution the Supremacy of the Constitution was expressly proclaimed as the foundation of the constitutional structure. And since only "Laws...made in pursuance" of the Constitution were given the status of "supreme law," laws repugnant to the Constitution were excluded from the imperative of obedience.

The Statute at the heart of this matter and before the Court has not been found repugnant to the Constitution, therefore has not been excluded from the imperative of obedience.

James Iredell, a Justice of the Supreme Court stated that: "the exercise of review power was unavoidable... It is not that the judges are appointed arbiters...but when an act is necessarily brought in judgment before them, they must, unavoidably, determine one way or another...Must not they say whether they will obey the Constitution or an act inconsistent with it?"

> McRee, Life and Correspondence of James Iredell 169,172-173 (1858)

The Courts, Hamilton urged in Federalist, No. 78, were designed to keep the legislature within constitutional limits.

> "The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges as a fundamental law. It must therefore belong to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred to the statute; the intention of the people to the intention of their agents." Federalist, No. 78.

Hamilton reasoning here, and even his very language, formed the foundation for the Marbury v Madison 1Cranch 137 (U.S. 1803) and later

McCulloch v The State of Maryland (1819) confirmation of judicial review and supremacy clause as the core principles of the constitutional system.

2. Under Article VI Clause 2 of the U.S. Constitution is Title 28 U.S.C. § 1331 Federal Question the "Supreme Law of the Land"?

Article VI of the United States Constitution insists on strict compliance with the requirement "[t]he Constitution, and the Laws of the United States which shall be made in Pursuance thereof; ..., shall be the supreme Law of the Land;"

The Supremacy of the Constitution was expressly proclaimed as the foundation of the constitutional structure. And since only "Laws... made in pursuance" of the Constitution were given the status of "supreme law," laws repugnant to the Constitution were excluded from the imperative of obedience.

There is little doubt that Title 28 U.S.C. § 1331 Federal Question was enacted into law.

Title 28 U.S.C. § 1331 Federal Question. As amended July 25, 1958 Pub. L. 85-554, §1, Pub. L. 96-486, § 2(a), 94 stat .2369.

The status of Title 28 U.S.C. § 1331 Federal Question being the "Supreme Law of the Land" is granted by the plain and unambiguous text of Article VI of the United States Constitution.

3. Did the Congress consent to the present action by enacting. Title 28 U.S.C. § 1331 Federal Question?

The United States Congress consented to suit by the plain and unambiguous text of Title 28 U.S.C. § 1331 Federal Question

Under this Federal Statute the "the district courts shall have original jurisdiction **of all** (emphasis added) civil actions arising under the Constitution, laws or treatise of the United States".

Since Article I, § 7, of the Constitution provides that every Senator and every Representative has the power to vote on "Every Bill. . . before it become a law" either as a result of its having been signed by the President or as a result of its Reconsideration in the light of the President's "Objections."

By having enacted a specific statute from which the intent is unmistakable and the subject matter permits no other conclusion than that of granting the plaintiffs authority to bring this case

4. Does the Petitioner have the right to go to court to sue the Respondent under Title 28 U.S.C. § 1331 Federal Question?

Judicial Power, the Court pointed out in 1911, "is the right to determine actual controversies arising between litigants, duly instituted in the courts of proper jurisdiction." [Muskrat v United States 219 U.S. 346, 361 (1911)

Federal courts have jurisdiction under §1331 where the petitioner's right to recover will be

sustained if federal law is given one construction and will be defeated if it is given another, unless the claim clearly appears to be immaterial and made solely to obtain jurisdiction, or is wholly insubstantial and frivolous. Steel Co. v. Citizens for Better Environment, 523 U.S. 83, 89

This civil action by virtue of the United States being a party; made this case a federal action with the federal district court being the Court of proper Jurisdiction.

It is clear it wasn't cited to "solely to obtain jurisdiction" Now on the second part, that of being "wholly insubstantial and frivolous" is clearly not the case either.

At no time **ever** when a citizen evokes the jurisdiction of the Courts to decide an issue concerning the Violations of Constitutional Rights can that matter be considered "insubstantial and frivolous."

The right to sue in the first place is very different from the underlying right the suit will, if allowed to continue, adjudicate. The question is a simple one, Title 28 U.S.C.§1331 Federal question by its unmistakable language where no other logical conclusion can be made states that the "district courts shall have original jurisdiction **of all civil actions** arising under the Constitution, laws, or treaties of the United States."

5. Is the Doctrine of Sovereign Immunity of the United States jeopardized by allowing Petitioners suit under Title 28 U.S.C. § 1331 Federal Question?

Article VI of the United States Constitution insists on strict compliance with the requirement "[t]he Constitution, and the Laws of the United States which shall be made in Pursuance thereof; ....., shall be the supreme Law of the Land;"

By allowing the plaintiff the right to go to court to sue the Committee on the Judiciary, U.S. House of Representatives under 28 U.S.C. § 1331 Federal Question, does not eliminate the doctrine of Sovereign Immunity in the future.

Intervention by the Courts in such a controversy would not risk damaging the public confidence that is vital to the functioning of the Judicial Branch deciding a suit to vindicate an interest outside the Government raises no specter of judicial readiness to enlist on one side of a political tug of war, since "the propriety of such action by a federal court has been recognized since Marbury v. Madison, 1 Cranch 137 (1803)."

"The irreplaceable value of the power articulated by Mr. Chief Justice Marshall [in Marbury v. Madison, 1 Cranch 137 (1803)] lies in the protection it has afforded the constitutional rights and liberties of individual citizens and minority groups against oppressive or discriminatory government action. It is this role, not some amorphous general supervision of the operations of government that has maintained public esteem for the federal courts and has permitted the peaceful coexistence of the countermajoritarian implications of judicial review and the democratic principles upon which our Federal Government in the final analysis rests." Id., at 192.

Since such an action does not deprive the Members of Congress of an adequate remedy--

since they may repeal the Act or exempt themselves from its reach.

Conclusion

The matter before the Court is not as Oliver Wendell Holmes once called a "mere declaration in the air", Giles v Harris, 189 U.S. 475,486 (1903) on the contrary, this case is "ripe and right for constitutional adjudication by this Court implies a real contest—an active clash of views, based upon an adequate foundation of issues, so as to bring a challenge to that which Congress has enacted inescapably before the Court." United States v Congress of Industrial, 335 U.S. at 125.

The statute that which Congress has enacted authorized that the "district courts shall have original jurisdiction **of all civil actions** arising under the Constitution, laws, or treaties of the United States." Title 28 U.S.C.§1331.

By virtue of it being enacted into law, it became the "Supreme Law of the Land". Under Article VI Clause 2 of the United States Constitution the Supremacy of the Constitution was expressly proclaimed as the foundation of the constitutional structure. And since only "Laws...made in pursuance" of the Constitution were given the status of "supreme law," laws repugnant to the Constitution were excluded from the imperative of obedience.

The Statute at the heart of this matter and before the Court has not been found repugnant to the Constitution, therefore has not been excluded from the imperative of obedience.

James Iredell, a Justice of the Supreme Court stated that:

> "the exercise of review power was unavoidable... It is not that the judges are appointed arbiters...but when an act is necessarily brought in judgment before them, they must, unavoidably, determine one way or another...Must not they say whether they will obey the Constitution or an act inconsistent with it?"
>
> McRee, Life and Correspondence of James Iredell 169,172-173 (1858)

The Courts, Hamilton urged in Federalist, No. 78, were designed to keep the legislature within constitutional limits.

> "The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges as a fundamental law. It must therefore belong to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred to the statute; the intention of the people to the intention of their agents." Federalist, No. 78.

Hamilton reasoning here, and even his very language, formed the foundation for the Marbury v Madison 1Cranch 137 (U.S. 1803) and later McCulloch v The State of Maryland (1819) confirmation of judicial review and supremacy clause as the core principles of the constitutional system.

We are shortly reaching the Bicentennial of the this landmark decision of Marbury v Madison 1Cranch 137 (U.S. 1803).

Will the Court abdicate its responsibility? and not hear or decide this important case before them -- **or**-- Will the Court exercise its Right of Judicial Review and determine the questions and issues before it. And Affirm this Right.

Justice Louis D. Brandeiss used to say that what the Supreme Court did not do was often more important than what it did do.

"It will be a pity for a man who has handed down hundreds of wise decisions from the bench, to be remembered for the only one unwise decision he made." John Adams

I, pray that my pleading will be heard and that the phrase "...the rule of law and not of men" will be true.

Respectfully Submitted,

Roger Liverman Jr.,
425 W 1720 N, #210
Provo, Utah 84604
(801) 344-5225

APPENDIX A—ORDER AND JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT DECIDED OCTOBER 23, 2002

United States Court of Appeals For The Tenth Circuit Decided October 23, 2002.
No. 02-4049

Roger Liverman, Jr.,
Plaintiff-Appellant,
v
Committee on the Judiciary,
U.S. House of Representatives,
Defendant-Appellee.

ORDER AND JUDGMENT[1]

Before **KELLY**, **McKAY**, and **MURPHY**, Circuit Judges.[2]

Plaintiff-Appellant Roger A. Liverman appeals the dismissal of his pro se complaint seeking monetary and injunctive relief against the Committee of the Judiciary of the United States House of Representatives ("the Committee"). Our jurisdiction arises under 28 U.S.C. §1291 and we affirm.

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[1] This order and judgment is not binding precedent, except under the doctrine of law of the case, re judicata, and collateral estoppel. This court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th. Cir. R. 36.3.

[2] After examining the briefs and the appellate record, this three-judge panel has determined unanimously that oral argument would not be of material assistance in the determination of this appeal. See Fed. R. App. P. 34 (a); 10th Cir. R. 34.1(G). The cause is therefore ordered submitted without oral argument.

In September 1997, Mr. Liverman filed a pro se Petition for a Redress of Grievances and a Private Claim with the United States House of Representatives ("the Petition"). Dissatisfied with the Committee's lack of response and failure to set a hearing on his Petition, Mr. Liverman filed Writs of Mandamus in November 1998("1998 Writ") and August 1999("1999 Writ") asking the district court to set a time and date for a hearing before the Committee. Mr. Liverman voluntarily dismissed the 1998 Writ, and in January 2000, the district court dismissed the 1999 Writ, which alleged that the Committee's inaction violated his due process and freedom of speech rights.

We affirmed the district court's January 2000 dismissal, citing Minnesota State Bd. for Community Colleges v Knight, 465 U.S. 271, 283-285 (1984, holding that members of the public enjoy no constitutional right to be heard by members of Congress. Aplee. Supp. App. 25-26. While that appeal was pending, Mr. Liverman filed yet another action asserting substantially similar claims. The district court dismissed sua sponte, holding that the judicial branch cannot compel the legislative branch to hear his Petition. Aplee. Supp. App. 29-30.

On May 29,2001, Mr. Liverman filed the current action. In this latest version, Mr. Liverman alleges that the manner employed by the Committee to review and process his Petition was "plainly arbitrary, capricious, unequal and standardless and it in violation of fundamental principles of Equal Protection and Due Process Clauses [sic] of the Fourteenth Amendment...."Aplee. Sup. App.33. On March 5, 2002, the district court dismissed Mr. Liverman's complaint pursuant to Fed. R. Civ. P. 12 (b)(6), holding that (1) sovereign immunity

barred the suit, (2) it lacked subject matter jurisdiction to order the Committee to perform a legislative function, and (3) inasmuch as the Petition called for the initiation of impeachment proceedings against various United States officials, Mr. Liverman lacked a judicially cognizable interest in the prosecution of another. R. Doc. 35 at 1-2.

Our review is de novo. See Sutton v, Utah State Sch. for the Deaf & Blind, 173 F.3d 1226, 1236 (10th Cir. 1999). A Rule 12(b)(6) dismissal will be upheld if, accepting the facts pleaded in the complaint as true, it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Id. (quoting GFF Corp. v Associated Wholesale Grocers Inc., 130 F. 3d 1381, 1384(10th Cir. 1997).

On appeal, Mr. Liverman raises various procedural challenges. He argues that (1) various local rules of the federal district court and the Tenth Circuit violate equal protection because they treat pro se cases different than counseled cases, (2) he did not receive the full benefit of the right to due process because (a) the action was dismissed based upon the pleadings, (b) the district court dismissed the action (i) without a report and recommendation from the assigned magistrate judge,(ii) when the factual contentions relied upon lacked evidentiary support, and (iii) he was denied initial pretrial disclosures from the Defendant,

As to Mr. Liverman's equal protection argument, we note first that Mr. Liverman did not raise this claim in the proceedings below. This Court has consistently declined to consider arguments raised for the first time on appeal. See McDonald v Kinder-Morgan Inc., 287 F.3d 992,999 (10th Cir. 2002). Although we have at times exercised discretion to address such arguments, we do so

only under "extraordinary circumstances," id., such as where resolution of an issue is "beyond reasonable doubt, and the failure to address the issues would result in a miscarriage of justice." Petrini v Howard, 918 F. 2d 1482, 1483 (10th Cir. 1990). Finding no reason to depart from our general rule, we decline to address this argument.

As to Mr. Liverman's claim that the district court erroneously dismissed his action on the pleadings without a hearing, we note that there is no right to an oral hearing under Fed. R. Civ. 12(b) (6). See Greene v WCI Holdings Corp., 136 F.3d 313, 315-316 (2d Cir. 1998). Whether to grant such a hearing is left to the discretion of the district court judge. Id. at 316. The district court did not abuse its discretion by dismissing Mr. Liverman's action without a hearing. Cf. Geear v, Boulder Community Hospital, 844 F. 2d 764, 766 (10th Cir, 1998) (hearing requirement for summary judgment motions satisfied by court's review of documents submitted by parties).

Mr. Liverman also claims that the district court deprived him of due process by dismissing his action via an order containing "factual contentions" that lacked evidentiary support. Applt. Br. At 18. Mr., Liverman takes issue with the court's characterization of his current claim as "similar" to his other lawsuits and with the court's observation that he was "dissatisfied with the committee's response" to his Petition. Id. However, Mr. Liverman fails to indicate how the court's language in any way denied him of due process. Moreover, the district court's order in no way depended on the accuracy of the benign introductory statements of which Mr. Liverman complains. Consequently, this contention is meritless.

Mr. Liverman's claim that the district court erroneously dismissed his action without a report and recommendation by the assigned magistrate judge is similarly without merit. Implicit in district court's discretionary authority under 28 U.S.C. § 636(b)(1)(B) to refer a matter to a magistrate is the power to withdraw a reference. Cf. 28 U.S.C. § 636(c)(4) (permitting withdraw of reference by district court in consent cases). Moreover, nothing in Section 636 suggests that a district court is constrained to act on a motion pending before the court until the magistrate has issued a recommendation. Consequently, the district court did not err in granting the Committee's motion to dismiss without first awaiting a recommendation by the magistrate judge.

Mr. Liverman also contends that the district court erred in staying discovery pending resolution of the Committee's motion to dismiss. We review district court rulings on discovery motions for an abuse of discretion. See Diaz v Paul J. Kennedy Law Firm, 289 F.3d 671, 674 (10th Cir, 2002). After a careful review of the record we cannot say that the district court abused its discretion. This conclusion is buttressed by the fact that the Committee raised sovereign immunity and other immunity-based defenses in its motion to dismiss. The Supreme Court has recognized where a defense of qualified immunity has been raised, "[u]ntil [the] threshold immunity question is resolved, discovery should not be allowed." Siegert v, Gilley, 500 U.S. 226, 231 (1991). Finding no logical reason why this rule should not apply where the defendant is primarily one of law, we conclude that the district court did not abuse its discretion in staying discovery pending resolution of the Committee's motion to dismiss.

On the merits, Mr. Liverman contends that the district court erred by dismissing on the grounds of sovereign immunity and lack of subject matter jurisdiction. Under the doctrine of sovereign immunity, the United States is immune from suit unless it consents to be sued. See United States v Sherwood, 312 U.S. 584, 586 (1941). Moreover, "the existence of consent is a prerequisite for jurisdiction." United States v. Mitchell, 463 U.S. 206, 212 (1983). The Unites States consents to suit only when Congress "unequivocally expresses in statutory text its intention to waive the United States' sovereign immunity." United States v. Richman (In re Talbot), 124 F.3d 1201,1206 (10th Cir. 1997)(citing United States v Nordic Village, Inc., 503 U.S. 30,33(1992)).

As the district court recognized, Congress has not consented to the present action. Aware of this jurisdictional hurdle to maintenance of his suit, Mr. Liverman argues that by enacting 28 U.S.C. § 1331, which provides for federal court jurisdiction of all civil actions "arising under the Constitution laws, or treaties of the United States," Congress has effectively waived sovereign immunity in all federal question cases, Mr. Liverman's argument is without merit. Obviously, acceptance of such an argument would necessarily eliminate the doctrine of sovereign immunity as a jurisdictional bar to suits against the United States. Moreover, this Court has specifically held that "[g]eneral jurisdictional statutes such as 28 U.S.C. §1331 do not waive the Government's sovereign immunity." Wyoming v United States, 279 F.3d 1214, 1225 (10th Cir. 2002)(citing Lonsdale v United States, 919 F. 2d 1440, 1443-44(10th Cir. 1990).

AFFIRMED.

Entered for the Court
Paul J Kelly, Jr.
Circuit Judge

APPENDIX B —ORDER OF THE UNITED STATES DISCTRICT COURT FOR THE DISTRICT OF UTAH CENTRAL DIVISION DECIDED MARCH 5, 2002.

In The United States District Court For The District of Utah, Central Division Decided March 5, 2002.
Case No. 01-CV-393B

Roger Liverman, Jr.,
Plaintiff,
v.
Committee on the Judiciary,
Defendant,

Order

Plaintiff, Roger Liverman, Jr., brought this action against the Committee on the Judiciary of the United States House of Representatives. His allegations of violation of his constitutional rights are vague at best. He has filed a petition for redress of grievances with the defendant and is apparently dissatisfied with the committee's response. This is one of similar suits brought by plaintiff and previously dismissed.

Defendant, Committee, has made a motion to dismiss. Plaintiff opposed the motion. Plaintiff is correct that defendant's assertion of qualified immunity is inapplicable as no individual Government personnel are named in the complaint.

However, the complaint must be dismissed. First, the sovereign immunity of the United States and the defendant agency has not been waived. Plaintiff cannot maintain suit directly against the United States, or an agency thereof, in the absence of a specific waiver of sovereign immunity. United States v. Richman (In re Talbot), 124 F.3d 1201, 1206 (10th Cir. 1997); Kelly v United States, 69 F.3d 1503(10th Cir. 1995). The United States and the agency defendant in this case has not consented to suit and the complaint must be dismissed.

Second, assuming plaintiff seeks some form of affirmative relief against defendant, it would appear to require the defendant to perform some legislative function. This Court has no subject matter jurisdiction to grant such relief Scheuer v Rhodes, 416 US 232 (1974). A Bivens action cannot be asserted for relief against a federal agency, Federal Deposit Ins. Corp. v. Meyer, 510 US 471, 483-86 (1994); Anderson v United States, 107 F. Supp. 2nd 191(E.D.N.Y. 2000), nor may a federal court resolve what is essentially a political dispute, Schroder v. Bush, 263 F.3d 1169 (10th Cir. 2001), or matters of Congressional self governance, Vander Jaqt v, O'Neill, 699 F.2d 1166(D.C. Cir. 1982).

Finally, plaintiff as a private citizen, lacks a judicially cognizable interest under the Constitution in the prosecution of another Linda R.S. v Richard D., 410 US 614(1973);Doyle v Okla. Bar. Ass'n, 998 F.2d 1559 (10th Cir. 1993), and plaintiff states no basis on which to maintain his suit. Therefore,

IT IS HEREBY ORDERED the plaintiff's complaint is **Dismissed.**
DATED this 5th day of March, 2002.

BY THE COURT:
"s/Dee V. Benson, Chief Judge"
Dee V. Benson, Chief Judge
United States District Court